IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 3275 of 2006(M)

PETITIONER:

PRAVEEN KUMAR, S/O.LATE
C.P.GOPINATHA MENON, AGED 34, RESIDING AT
PRIYA HOUSE, ASHRAMAM ROAD, KALADY.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

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1. DISTRICT COLLECTOR, COLLECTORATE,
IDUKKI.

2. THE SUB COLLECTOR, DEVICOLAM.

3. THE TAHASILDAR (RR),
REVENUE RECOVERY OFFICE, NEDUMKANDAM,
IDUKKI DIST.

4. UNION BANK OF INDIA,
UDUMBANCHOLA BRANCH, UDUMBANCHOLA.

5. K.I.LARGESS, C/O.T.V.MURALEEDHARAN,
SRUTHI, H.NO.44/2836, LINK GARDEN COLONY,
KALOOR, KOCHI-17.

BY ADV. SRI.A.S.P.KURUP, SC, UBI – FOR R4.
SRI.PULIKKOOL ABUBACKER – FOR R5
SRI.MANSOOR.B.H.
ADV. SHRI. BASANT BALAJI, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 3275/2006

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF DOCUMENT NO. 1810/1995 OF UDUMBANCHOLA SRO.

P2 : COPY OF PROCEEDINGS NO. LR (B)7-44697/2001/KSIS DATED 28/02/2003.

P3 : COPY OF JUDGMENT DATED 04/7/2003 IN W.P.(C)No. 21271/03 OF HON'BLE HIGH COURT OF KERALA.

P4 : COPY OF THE JUDGMENT DATED 28/11/2003 IN W.P.(C)No. 37151/2003 OF HON'BLE HIGH COURT OF KERALA.

P5 : COPY OF NOTICE DATED 29/10/2004 OF THE 1ST RESPONDENT.

P6 : COPY OF DEATH CERTIFICATE DATED 27/11/2004 OF C.P.GOPINATHA MENON.

P7 : COPY OF LETTER DATED 04/12/2004 ADDRESSED TO DEPUTY COLLECTOR (RR) IDUKKY.

P8 : COPY OF THE ACKNOWLEDGEMENT CARD FOR RECEIPT OF EXT.P7.

P9 : COPY OF NOTICE DATED 27/10/2005 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

P10 : COPY OF REPRESENTATION DATED 07/12/2005 TO THE 1ST RESPONDENT.

P11 : COPY OF LETTER DATED 10/12/2005 ISSUED BY THE REGIONAL OFFICE OF UNION Bank OF INDIA TO THE 4TH RESPONDENT.

P12 : COPY OF LETTER DATED 12/12/2005 TO THE 3RD RESPONDENT BY THE 4TH RESPONDENT.

P13 : COPY OF LETTER DATED 22/12/2005 ISSUED BY 4TH RESPONDENT TO THE 1ST RESPONDENT.

P14 : COPY OF PROCEEDINGS DATED 01/12/2004 OF THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS

R1(a) : COPY OF THE CIRCULAR DATED 04/11/2005 OF REVENUE (H) DEPARTMENT, TRIVANDRUM, NO. 43972/43/05/RD.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 3275 of 2006

Dated, this the 25th day of May, 2007

J U D G M E N T

This WP(C) is filed challenging Ext.P14 order issued by the 1st respondent confirming sale of petitioner's deceased father's property in favour of the 5th respondent for Rs. 1 lakh. The property is 4 acres and 78 cents of land, which was mortgaged by petitioner's father to the 4th respondent bank towards loan availed by him for the company under his control. Though the sale was confirmed in favour of the 5th respondent by the revenue recovery authority, the same was challenged by the defaulter, namely, petitioner's father, before the Land Revenue Commissioner on account of sale at below market price and Land Revenue Commissioner set aside the confirmation of sale on 11/10/2001 and the matter was remanded for reconsideration by the 1st respondent and on the date of hearing, the defaulter, namely petitioner's father died. Though the petitioner informed the death of his father, District Collector did not post the case for hearing the legal heirs and proceeded to confirm the sale as per the impugned order, on

the basis that sale of 4.78 acres of land for Rs. 1 lakh is at market price. The action of the Collector in confirming sale without hearing the affected party, in spite of specific direction by the Land Revenue Commissioner is illegal is the contention of the petitioner. The learned counsel for the 5th respondent submitted that borrower was a company, though under the control of petitioner's father and hence petitioner cannot claim title over the property as legal heir after the death of his father. However, Ext.P1 produced in Court shows that title deed was in favour of petitioner's father. Further it is to be noted that no shareholder or director of the said company has raised any objection against petitioner's claim on the said property after the death of his father. The purchaser also did not raise the contention earlier that the petitioner is not the legal heir entitled to claim the property and is neither a shareholder nor a director of the company. Even though the contention of the 5th respondent that the property is in the name of the borrower company, he has not produced any material to substantiate it. It is also conceded that the property was not sold by the Bank because petitioner settled the balance liability under OTS scheme by making payment of Rs. 3 lakhs as against Rs. 1 lakh obtained by revenue

recovery authorities through recovery proceedings. Therefore, I feel if sale is not set aside, the same would not protect even the interest of the creditor Bank, which is a public institution. The sale at such a low price should be interfered with because if the impugned order is upheld, then petitioner can claim refund of Rs. 3 lakhs paid to the company towards settlement of liability and the Bank will have to be contented with Rs. 1 lakh obtained through revenue recovery proceedings. Market value of the property is above Rs. 1 lakh is obvious because petitioner has paid Rs. 3 lakhs to the Bank to maintain his claim over the property. In the circumstance, WP(C) is allowed vacating Ext.P14 order of the District Collector, which was issued without hearing the petitioner. However, there will be direction to 3rd respondent to refund the amount deposited by the 5th respondent forthwith. It is seen that the Tahsildar has not deposited the money with the Bank and therefore, Government has availed the amount recovered through recovery proceedings. Treasury Deposits, accepted by the Government, were at high rate of interest i.e. up to 13% per annum during that period and therefore Government is liable to pay interest to the 5th respondent. Therefore, Tahsildar is directed to

pay along with the amount, interest @ 12% per annum from the date of deposit till date of refund, which should be made within one month from the date of production of a copy of this judgment. He can retain for Government, collection charges paid by the Bank.

This WP(C) is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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